

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
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December 28, 2017

Ms. Jeannette Clack
Western District of Texas, Waco
United States District Court
800 Franklin Avenue
Waco, TX 76701

No. 17-50065 Guillermo Ortiz v. Lorie Davis, Director
USDC No. 6:14-CV-140

Dear Ms. Clack,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By: Mary Frances Yeager, Deputy Clerk
504-310-7686

cc w/encl:

Ms. Melissa L. Hargis
Mr. Thomas Merrill Jones
Mr. Edward Larry Marshall
Mr. Guillermo Cintron Ortiz

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-50065
USDC No. 6:14-CV-140



A True Copy
Certified order issued Dec 28, 2017

GUILLERMO CINTRON ORTIZ,

Steve W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

Petitioner-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Western District of Texas

O R D E R:

Guillermo Cintron Ortiz, Texas prisoner # 809008, moves for a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2254 petition in which he challenged his jury trial convictions for indecency with a child by contact. Ortiz asserts that his trial attorney rendered ineffective assistance by failing to object to inadmissible hearsay and character evidence. With the benefit of liberal construction, he also asserts that he is entitled to relief because he is innocent. Because this claim is raised for the first time, it will not be considered. *See Henderson v. Cockrell*, 333 F.3d 592, 605 (5th Cir. 2003).

To obtain a COA, Ortiz must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see Slack v. McDaniel*, 529

No. 17-50065

U.S. 473, 484 (2000). Because the district court rejected Ortiz's ineffective-assistance-of-counsel claims on the merits, Ortiz "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) (quoting *Slack*, 529 U.S. at 484).

He has failed to do so. Ortiz does not address the district court's assessment of his claims but merely lists the claims without discussion, thereby waiving them. *See Brinkmann v. Dallas Cty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). Accordingly, he has failed to make the required showing. *See Slack*, 529 U.S. at 484. His motion for a COA is DENIED.

/s/Jennifer Walker Elrod
JENNIFER WALKER ELROD
UNITED STATES CIRCUIT JUDGE